

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**RICHARD MARINO,**

:

**Plaintiff,**

:

**Case No. 07-cv-7726 (RJH)(DFE)**

**v.**

:

**ECF CASE**

**GLOBAL CAPITAL HOLDINGS  
MANAGEMENT, LLC and JOSEPH  
PALLADINO,**

:

:

**Defendants.**

:

:

:

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ENTER JUDGMENT**

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Attorneys for Plaintiff Richard Marino

### **PRELIMINARY STATEMENT**

Plaintiff Richard Marino (“Marino”) respectfully submits this memorandum of law in support of his motion for an Order, pursuant to the terms of this Court’s Agreed Order For Dismissal dated January 3, 2008 (the “Agreed Order”), (a) re-opening this Action and (b) entering Judgment against Defendants Global Capital Holdings Management, LLC (“GCHM”) and Joseph Palladino (“Palladino” and together with GCHM, the “Defendants”), jointly and severally, in accordance with the terms of the Settlement Agreement (as that term is defined below).

As set forth in the accompanying Affidavit of Richard Marino (the “Marino Affidavit”) and the accompanying Affidavit of Michael H. Levison (the “Levison Affidavit”), the Defendants have failed to comply with the clear terms of that certain Settlement Agreement dated December 17, 2007 entered into in connection with the above-referenced matter (the “Settlement Agreement”) by failing to pay the Initial Payment (as that term is defined in the Settlement Agreement) when due. As such and in accordance with the terms of the Agreed Order, Marino is entitled to move to re-open this Action and to enter Judgment against the Defendants.

As detailed below, it is respectfully submitted that this Court should enforce the terms of the Settlement Agreement and immediately enter Judgment against the Defendants, jointly and severally, in the amount of \$3,500,000.00, plus post-judgment interest from the date of entry of Judgment at the federal rate set forth in 28 U.S.C. §1961.

### **STATEMENT OF FACTS**

Marino respectfully refers this Court to the accompanying Marino Affidavit and the Levison Affidavit for a recitation underlying facts of this matter.

**ARGUMENT**

**POINT I**

**THE AGREED ORDER PERMITS MARINO TO MAKE THIS MOTION**

The Agreed Order clearly provides that Marino may move this Court to re-open this Action to enforce the terms of the Settlement Agreement. More importantly, the Agreed Order notes that this Court has retained jurisdiction of this Action in order to enforce the terms of the Settlement Agreement.

**POINT I**

**THE COURT SHOULD ENFORCE THE CLEAR TERMS OF  
THE SETTLEMENT AGREEMENT**

This motion seeks to enforce the clear terms of the Settlement Agreement. It is well-settled that a settlement agreement is a contract, and once entered into is binding and conclusive. *Jannah v. GAF Corp.*, 887 F.2d 432, 436 (2d Cir.1989). As with any other type of contract, a stipulated settlement must be construed according to general principles of contract law. *Geller v. Branich Int'l Realty Corp.*, 212 F.3d 734, 737 (2d Cir.2000). If a contract is clear, the court must not alter or go beyond the agreement's express terms or impose obligations on the parties that are not mandated by the express terms of the contract. *Red Ball Interior Demolition Corp. v. Palmadessa*, 173 F.3d 481, 484 (2d Cir.1999).

Here, it is beyond dispute that the Defendants have defaulted under the terms of the Settlement Agreement. (*See generally*, Marino Affidavit and Levison Affidavit). It is also indisputable that the relevant terms of the Settlement Agreement are more than clear. Thus the well-settled principles of contract law require this Court to enter Judgment against the Defendants in accordance with the express terms of the Settlement Agreement.

**CONCLUSION**

As such, Marino respectfully requests that this Court grant the instant motion in its entirety and enter Judgment against the Defendants in the form annexed to the Levison Aff. as Exhibit "D".

Dated: New York, New York  
February 18, 2008

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